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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,394	02/28/2002	Jeffrey Batoff	NEXP-0005	8067

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EXAMINER

BUCHANAN, CHRISTOPHER R

ART UNIT	PAPER NUMBER
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3627

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/085,394

Applicant(s)

BATOFF, JEFFREY

Examiner

Christopher R. Buchanan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 63-103, 105-110, 112, 113, 115, 116, 118-120 and 188-263 is/are pending in the application.
4a) Of the above claim(s) 64-68, 70-86, 91-103 and 105-109 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 63, 69, 87-90, 110, 112, 113, 115, 116, 118-120 and 188-263 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's response submitted on October 5, 2006 regarding the examiner's requirement for election of species of September 6, 2006 has been considered and applicant's arguments have been found persuasive. In view of applicant's arguments, the requirement for election of species submitted on September 6, 2006 has been withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 63, 69, 87-90, 110, 112, 113, 115, 116, 118-120, and 188-263 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (US 2004/0098317 A1) alone.

Regarding claim 63, Postrel discloses a method of operating an electronic barter system that includes a first user listing items (i.e., awards or credits) on the barter system (p. 2 par. 14, see Fig. 6), the barter system determining and awarding the first user an amount of barter credit for the listed item (p. 2 par. 14, p. 4 par. 38, p. 6 par. 57), the barter system identifying at least one item listed on the system by other users

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that may be desirous to the first user (p. 3 par. 31, p. 4 par. 34), the first user selecting a desired item via the barter system (p. 4 par. 32, see Fig. 7), the barter system permitting a portion of the barter credit of the first user to be used toward acquisition of the desired item from the other user (p. 2 par. 16), wherein the other user is not required to acquire any item from the first user (p. 2 par. 16, p. 4 par. 32, see Fig. 4), and the barter system sending a request to the other user that listed the item to surrender the item (p. 4 par. 32).

The method of Postrel differs from the claimed invention in that the users are not explicitly shown to be consumers. However, it would be an obvious matter of design choice that the users could be of various types (consumers, producers, retailers, middlemen, etc.). It would have been obvious to one of ordinary skill in the art at the time the invention was made that the users could be consumers to enable direct consumer to consumer transfer of goods and services.

Regarding claim 69, the system provides incentives to the users (p. 5 par. 51, p. 6 par. 53). Regarding claims 87-90, the system puts items into categories (p. 5 par. 47) and offers items to the users based on search criteria, including category which would be an obvious design parameter. A variety of well-known means could be used to control inventory, such as first-in/first-out and grouping by UPC or similar numbers. Regarding claim 110, listing an item creates no obligation to surrender the item. Regarding claim 112, no limitations are placed on the levels of used and unused barter credit of system users (p. 5 par. 47). Regarding claim 113, the system determines when the user must surrender an item (p. 4 par. 32). Regarding claim 115, it would be

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an obvious matter of design that user credit could be transferred to the system when a user account is closed (p. 5 par. 45+). Regarding claim 116, the system is Internet based (p. 2 par. 14). Regarding claims 118-120, communication between users and the system could be conducting using a variety of well-known means, such as telephone, wireless devices, portable devices, etc. (p. 2 par. 14).

Regarding claims 189-223, the features of the invention recited in claims 189-223 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system determining at least one condition under which a user must give up possession of an item (claims 188, 200, 220). The method of Postrel includes the barter system determining at least one condition under which a user must give up possession of an item (p. 2 par. 16, p. 4 par. 32). Regarding claims 224-234, the features of the invention recited in claims 224-234 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the system only allowing entry of items listed in a lookup database (claim 224). The method of Postrel discloses items of different categories being entered into the system database (p. 5 par. 44+). It is well-known to organize inventory into categories in a lookup database (e-Bay, for example) and it would be a matter of design to require entry of items into a given category within the database. Regarding claims 235-246, the features of the invention recited in claims 235-246 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above. Regarding claims 247-249, the features of the invention recited in claims 247-249 have already been addressed in the rejection of

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claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system determining the cost of postage, notifying the user of the cost, and compensating the user for a portion of the cost of postage. The method of Postrel includes creating a contract for delivery of the item (p. 5 par. 39), which is well-known include determining delivery costs, notifying customers of the cost, and possibly providing discount delivery costs (Amazon free delivery, for example). Regarding claims 250-252, the features of the invention recited in claims 250-252 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, and 118-120 above, except for the barter system monitoring user compliance with user obligations, which could include shipping items of a minimum quality and in a timely fashion. The method of Postrel includes user policies and conditions (p. 2 par. 16, p. 3 par. 33), which are well-known to include item quality and shipping timeliness (e-Bay user policies, for example). Regarding claims 253-263, the features of the invention recited in claims 253-263 have already been addressed in the rejection of claims 63, 69, 87-90, 110, 112, 113, 115, 116, 118-120, and 188-252 above.

Response to Arguments

4. Applicant's arguments filed April 13, 2006 have been fully considered but they are not persuasive. Applicant argues that Postrel does not disclose the invention as set forth in the rejection of claim 1 under 35 U.S.C. 102 and that Moore in view of Postrel does not disclose the invention as set forth in the rejection of the remaining claims. In view of applicant's cancellation of claim 1 and other claims, amendments to the

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remaining claims, and addition of new claims, a new rejection has been set forth in this action. The relevant points of applicant's arguments are addressed in the rejection above.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R. Buchanan whose telephone number is 571-272-8134. The examiner can normally be reached on Mon.-Fri. 9:00am - 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CB


F. RYAN ZEENDER
PRIMARY EXAMINER